

Dog Warden Service – Cabinet Report Appendix A, Detail and Purpose of the PSPO

The proposed introduction of the Public Space Protection Order (PSPO) is a measure aimed at improving the environment of public open spaces for residents and visitors alike and that these spaces are not spoiled by the actions of pet owners who do not act responsibly either by allowing their pets to be a nuisance or when fouling and not clearing up after them.

There is a legal duty on the Council to consult on any proposed PSPO with the Chief Inspector of Police, the Police and Crime Commissioner (PCC) and any other relevant bodies in particular any community representatives within the local authority and the owner or occupier of land.

The consultation will be published on the Council's web site with notice provided to relevant bodies believed to have an interest.

An Equality, Social Inclusion and Health Impact Assessment (ESHIA) has commenced with the current draft set out at Appendix D to this report. This will benefit from the comments and views of the community and other interested parties received as part of the consultation process and an updated ESHIA will be presented back to Cabinet for approval after the consultation exercise.

To encourage a focused response to the consultation and to further inform the ESHIA a number of documents will be published in addition to the draft PSPO. This includes publicity material included in Appendix B and a FAQ document providing basic information on the PSPO and the implementation process. The proposed consultation documents are set out at Appendix B.

A challenge over the validity of a PSPO can be made up to 6 weeks after an order or any variation to an order is made. The basis upon which the draft PSPO has been derived follows an assessment of the data retained by various agencies and businesses together with on-going consultation with key stakeholders. The totality of information received to date supports the arguments for a PSPO. The method by which we are proposing to undertake the consultation will allow the concerns and views of the community, land owners and any interested parties to be considered, thereby reducing the risk of a challenge.

When making a PSPO a local authority must have particular regard to the rights of freedom of expression and freedom of assembly set out in the European Convention on Human Rights and the Human Rights Act. Whilst the PSPO itself has the potential to impact human rights, the specific recommendation in this report is not at variance with the Human Rights Act 1998 and is unlikely to result in any adverse Human Rights Act implications.

The PSPO has five components and prohibitions covering the prevention of dog fouling, the collection and disposal of dog waste by dog owners, exclusion of dogs from equipped play areas and fencing sports areas, dogs to be on leads on the highway and the authority for officers to direct owner to put their dogs on leads in public areas where the animals are creating a nuisance or safety concern.

The wording of the PSPO will be specifically drafted in a way to avoid any allegation that the Council is targeting any specific group or type of individuals.

The PSPO is fundamentally aimed at providing an additional tool for the Council to address nuisance being caused by issuing fixed penalty notices without resorting to criminal action through the courts unless absolutely necessary.

Financial Implications

There are a number of financial implications that members need to be aware of in the event that a proposed PSPO is implemented.

Regulations made under the Anti-Social Behaviour, Crime and Policing Act 2014 (the Act) require that where a PSPO is made, extended or varied, the PSPO is published on the Council's website and also that sufficient signage is erected on or adjacent to the public area to which the order relates. Given the size of the area in question there will be a financial implication for the Council in respect of erecting adequate signs on the highway and open spaces. This is currently estimated to be in the region of £4000 to £5000, however the final cost is dependent on the prohibitions agreed as these will need to be included in the signs. It is anticipated these costs will be kept within current budget allocations.

Enforcement can be undertaken by both the Police and authorised Local Authority officers. In the event that the PSPO is approved the main responsibility for enforcement will rest with the Council.

An identified breach of a PSPO is a criminal offence and a person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 (maximum £1000). However, the legislation enables such offences to be dealt with, where appropriate, by way of a fixed penalty notice (FPN) which if paid would discharge an individual's liability to conviction for the offence. The amount of any FPN can be set by the Council to a maximum of £100 with the option of a reduction in the event of early payment.

Where a FPN is not considered appropriate or where a FPN is not paid then consideration will need to be given to the commencement of legal proceedings. Only the Council may bring proceedings for a breach of the PSPO; the Police (CPS) will not be able to commence legal proceedings for a breach of a PSPO even where enforcement was undertaken by police officers. Ultimately, the Council will need to consider any such breaches and where appropriate having taken into account the Council's Better Regulation and Enforcement Policy (adopted by the Council on 27 February 2014) pursue matters through the courts. Any costs associated with legal proceedings, which are not recovered, will be borne by the Council.

Background

The Anti-Social Behaviour, Crime and Policing Act 2014 introduced Public Spaces Protection Orders (PSPOs) which are intended to provide the means of preventing individuals or groups committing anti-social behaviour in a public space. Section 59 of the Act sets out the test which must be satisfied before a local authority make a PSPO and where the behaviour is having, or likely to have, a detrimental effect on the quality of life of those in the locality; be persistent or continuing in nature; and be unreasonable.

PSPOs create a framework that either replaces or updates existing public space restrictions such as alcohol Designated Public Place Orders and Dog Control Orders and permits local authorities to introduce new regulations.

The power to make an Order rests with local authorities, in consultation with the police and other relevant bodies who may be affected. A local authority can make a PSPO in respect of any public space within its administrative boundary. The definition of public space is wide and includes any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.

A PSPO can be in force for any period up to a maximum of three years after which time the Local Authority must consider whether or not to put in place another PSPO.

Appeals against a draft PSPO can be lodged by anyone who lives in, or regularly works in or visits the area in the High Court within six weeks of issue. Further appeal can be made when a PSPO is varied by the local authority.

A PSPO may be applied wherever there is material evidence of anti-social behaviour, for example, in reports to the police, local authorities or partner agencies. A summary of reported dog fouling and nuisance reports is contained in Appendix C

The restrictions and requirements included in a PSPO may be comprehensive or targeted on specific behaviours by particular groups and/or at specified times.

Orders can be enforced by a police officer, a police community support officer, authorised council officers and employees of other delegated organisations.

A breach of the PSPO can be dealt with through the issuing of a Fixed Penalty Notice of up to £100, or a level 3 fine (max £1000) on prosecution.

In establishing a PSPO, appropriate signage must be displayed in accordance with the requirements of the Act on entry points to the public area and within the said area.

PSPO - Proposed

The first prohibition relates to allowing dog fouling in public spaces. When the council is dealing with this behaviour it must rely on gathering evidence to consider an indirect offence, e.g. 'exposure', which will often prove difficult to pursue. Inclusion within the PSPO will make this behaviour a criminal act and enable more effective enforcement against this behaviour. In addition to any data evidence provided, statements will be required from witnesses, employees, or the Police.

The second prohibition relates to removing and disposing of dog waste if a dog has been allowed to foul. If when challenged, there is reasonable intention of breach if a dog owner or the person in control of the dog at the time fails to provide a dog waste carrier or receptacle for collecting and disposing of dog waste.

The third prohibition relates to equipped play areas and fenced sports areas and a breach will occur if a dog owner or person in control of the animal allows the dog to enter these areas.

The fourth prohibition concerns a direction from an authorised officer for an owner or person in control of a dog to put it on a lead in a public area for reasons of safety or nuisance. A breach will occur if the person fails to respond to the request.

The final, fifth, prohibition is failure to comply with the order to have dogs on leads either on the highway, adjacent to the highway, footways and cycle ways and is required to protect not only the animal but those members of the public using the highway and rights of way.

The Act provides that Fixed Penalty Notices (FPNs) can be used to address a breach of the PSPO. In the event that the consultation process supports the need for a PSPO there will be a need for Cabinet to consider and decide on where the Authority wishes to utilise the FPN regime and to determine the applicable penalty up to a maximum of £100. In addition the Council may choose to reduce the penalty providing it is paid within a given period.

Utilising the FPN regime will require a system to be set up. Currently the Public Protection Service administers and manages the system of FPNs issued for a variety of environmental crimes such as littering and dog fouling in conjunction with Shropshire Council's Environmental Maintenance Service. It is anticipated that this system would be further developed to include FPNs for breaches of a PSPO.

For any breach of the PSPO, Shropshire Council will, where appropriate, issue any FPN having reviewed the necessary evidence. To do this, a reporting mechanism will be developed to provide the Authority with the necessary information/evidence in a timely fashion. Further,

In the event that a breach of the PSPO leads to the need for legal proceedings, the Public Protection Service has the relevant expertise to undertake this action and is in a position to work with the police on such cases. Cabinet will be asked to agree that the Public Protection Service takes on this responsibility in the event that the PSPO is implemented.

Any enforcement action including consideration of legal proceedings by officers of the Council will be undertaken in line with the Council's Better Regulation and Enforcement Policy. The police will be required to have due regard to this policy if required to take any enforcement activity under the PSPO.